

ISSUED: JUL 31 2014 (BS)

This appeal was referred for independent evaluation by the Civil Service Commission in a decision rendered March 13, 2014, which is attached. The appellant was evaluated by Dr. Robert Kanen, who rendered the attached Psychological Evaluation and Report on April 1, 2014. Exceptions were filed on behalf of the appellant.

DPF-439 * Revised 7/95

clarification on 40 Inwald Personality Inventory items and did not know the meanings of words such as sad, discouraged, anxious, blue, reckless, irritated, brushes with the law, annoyed, evil, tingling, deliberately, restless, faults, and justified. Many of these words have to do with feeling states. Dr. Kanen opined that the appellant processes English much too slowly which means that inmates would have difficulty communicating with him, and that could lead to some possibly dangerous situations. The appellant is likely to have difficulty understanding what inmates are trying to say to him. The needs of inmates who are under stress and/or mentally ill could go unmet with possibly dangerous consequences. The Civil Service Commission also requested that Dr. Kanen assess the possibility that the appellant was racially biased. Dr. Kanen noted that there was no evidence of racial bias. However, Dr. Kanen further offered that, to his knowledge, no one had actually developed a test that measures racial bias in law enforcement candidates. Aside from the appellant's difficulties with the English language, Dr. Kanen found no evidence of mental illness, personality disorder, substance abuse problems, or antisocial tendencies. The appellant was basically stable and responsible. Still, Dr. Kanen concluded that, at the present time, the appellant was not psychologically suitable to be employed as a Correction Officer Recruit but implied that he would be if he continues to improve his English communication skills.

In his exceptions, the appellant argues that there does not appear to be any nexus between the various psychological test results and Dr. Kanen's opinion regarding the appellant's language skills. In fact, Dr. Kanen specially states in his report that the appellant does not show any evidence of mental illness, personality disorder, substance abuse problems, or antisocial tendencies that would preclude him from working as a Correction Officer Recruit. The evaluation of Dr. Kanen is negative only due to the language issue, which the appellant argues is highly subjective. The appellant asserts that he understood English well enough to pass the civil service examination, without any assistance and within the allowed time frame, and that he also passed the background investigation to be considered for appointment. The appellant argues that Dr. Kanen provides no psychological basis for considering the appellant psychologically unsuitable. While the appellant's test scores were not the highest, they were not unacceptable. The main premise put forth by Dr. Kanen appears to be the appellant's grasp of the English language. However, Dr. Latimer, who evaluated the appellant on his own behalf, reported that "this patient has made excellent progress in the development of his vocabulary in English." The appellant questions how two experts can arrive at such different conclusions. The appellant also indicates that he runs a successful business with a majority of English speaking customers without any problems. The appellant respectfully requests that he be put back on the list and allowed to attend the academy. It will be during this period that he will be able to successfully perform as a Correction Officer Recruit. If not, the Department of Corrections can remove him. Additionally, once he graduates, the appellant will be on a one year probationary

period where he will have to continue to prove that he can speak English well enough to perform the duties of the position. Denying the appellant this opportunity would be a severe injustice to an immigrant who continues to learn every day the ways of American life.

CONCLUSION

The Class Specification for Correction Officer Recruit is the official job description for such State positions within the merit system. According to the specification, an Officer is involved in providing appropriate care and custody of a designated group of inmates. These Officers must strictly follow rules, regulations, policies and other operational procedures of that institution. Examples of work include: encouraging inmates toward complete social rehabilitation; patrolling assigned areas and reporting unusual incidents immediately; preventing disturbances and escapes; maintaining discipline in areas where there are groups of inmates; ensuring that institution equipment is maintained and kept clean; inspecting all places of possible egress by inmates; finding weapons on inmates or grounds; noting suspicious persons and conditions and taking appropriate actions; and performing investigations and preparing detailed and cohesive reports.

The specification notes the following as required skills and abilities needed to perform the job: the ability to understand, remember and carry out oral and written directions and to learn quickly from written and verbal explanations; the ability to analyze custodial problems, organize work and develop effective work methods; the ability to recognize significant conditions and take proper actions in accordance with prescribed rules; the ability to perform repetitive work without loss of equanimity, patience or courtesy; the ability to remain calm and decisive in emergency situations and to retain emotional stability; the ability to give clear, accurate and explicit directions; and the ability to prepare clear, accurate and informative reports of significant conditions and actions taken.

The Civil Service Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and found that the psychological traits which were identified and supported by test procedures and the behavioral record relate adversely to the appellant's ability to effectively perform the duties of the title. The exceptions filed on behalf of the appellant do not persuasively dispute the findings and recommendations of Dr. Kanen. Specifically, the Commission shares the concerns of Dr. Kanen about the appellant's capacity to comprehend and process the English language under stressful circumstances in a correctional environment. Additionally, the Commission notes that the appellant's language difficulties prevented him from providing a valid profile on the Inwald Personality Inventory and it shares Dr. Kanen's concerns that the appellant became argumentative and authoritarian when confronted with his language difficulties.


Accordingly, having considered the record and the report and recommendation of the independent evaluator and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached report and recommendation of the independent evaluator.

ORDER

The Civil Service Commission finds that the appointing authority has met its burden of proof that L.K. is psychologically unfit to perform effectively the duties of a Correction Officer Recruit and, therefore, the Commission orders that his name be removed from the subject eligible list.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JULY, 2014**



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence:

Henry Maurer
Director
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P.O. Box 312
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Attachment

c: L.K.
Wieslaw S. Krajewski, Esq.
Jennifer Rodriguez
Kenneth Connolly

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April 1, 2014

Henry Maurer, Director
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Civil Service Commission
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In the Matter of [REDACTED] Correction's Officer Recruit (S9999K)
Department of Corrections (CSC Docket No. 2013-2628)

CONFIDENTIAL PSYCHOLOGICAL EVALUATION

Name: [REDACTED]
DOB: June 22, 1987
Age: 26 Years Old
Marital Status: Married
Current Address: [REDACTED]
Date of Evaluation: March 28, 2014

Source and Reason for Referral:

[REDACTED] was referred for an independent psychological evaluation by the Medical Review Panel of the State of New Jersey Civil Service Commission. He was evaluated by Dr. Galeegos of the Institute of Forensic Psychology and found to be psychologically unsuitable for employment as a Correction's Officer. He was evaluated by Dr. Sostowski and Dr. Latimer psychiatrists who found him psychologically suitable for employment as a Correction's Officer.

This evaluation will assess [REDACTED]' current level of psychological functioning and capacity to perform the full duties of a Correction's Officer.

Tests Administered:

Clinical Interview/mental status examination

Wechsler Adult Intelligence Scale 3rd edition prorated (WAIS – III)

Wide Range Achievement Test – revision 3, reading and spelling parts

Inwald Personality Inventory – 2

Review of letter to me by [REDACTED]

Review of various letters he has written regarding his status as a Correction's Officer Recruit

Review of Psychiatric Evaluation by Robert Latimer, M.D.

Review of Psychiatric Evaluation by Richard Sostowski, M.D.

Interview Findings and Background Information:

[REDACTED] is a 26-year-old male. He wore a suit and tie for the evaluation. He has been married for eight years and he and his wife are expecting their first child. He is 6 feet tall and weighs 180 pounds. He owns his own home and has been living at this current address since 2010. He was born in Poland and came to the United States in 2004 when he was 17 years old. This accounts for his accent. He was raised by both parents. His parents separated about 10 years ago. His father lives in Trenton, New Jersey and his mother lives in Poland. He has good relationships with his parents. He has three older sisters. He graduated from Lawrence High School in 2006. He reports that in Poland he received good grades. He reports that in the United States he had some trouble academically because of language problems, but he managed to improve and was the student of the month in his senior year. He has been a self-employed contractor since 2007.

Mental Status Examination and Psychiatric History:

[REDACTED] was oriented to time, place, and person. He was cooperative and behaviorally controlled. He was alert and responsive. He was not in distress. His speech was sometimes difficult to understand. He sometimes had difficulty understanding me. His mood was calm for most of the evaluation. Affect was appropriate. Thought processes were logical and coherent. He reports no history of hallucinations or delusions. He reports no problems with sleep or appetite. He reports no symptoms of depression.

He has never taken medication for mental health problems. There is no history of psychiatric hospitalizations or mental illness. He has never been in counseling. There is no history of suicide attempts.

History of Substance Abuse and Antisocial Behavior:

He reports an arrest in 2009 for shoplifting in Ewing Township and it was dismissed. He admits that he tried to remove a tile saw from a store. He reports no DWIs. He reports a clean driving record at this time. There is no history of domestic violence. He describes his drinking patterns as one shot or two of whiskey every two weeks. He reports no illegal drug use.

Results of Psychological Evaluations:

[REDACTED] obtained an estimated verbal IQ of 78, performance IQ of 99, and an estimated full-scale IQ of 87 placing in the low average range of intelligence. He is functioning above 19% of the population and below 81%. Of significant concern are his verbal skills. He had a scaled score of 9 on information subtest which is in the average range. He is able to recall factual information about the world around him. His vocabulary scaled score is 6 and is above 9% and below 91% of the population. Understanding the meanings of words is difficult. The Similarities scaled score is in the 2nd percentile and below 98% of the general population. His thinking is on a very concrete level. For example when asked in what way are an orange and a banana alike he replied they are yellow. When asked in what way are an eye and an ear alike he replied look and listen. On the vocabulary subtest score beginning with item 14 he answered "I don't know" to items 14 through 19. He asked if he could use a dictionary. He said "I would know it if it was in Polish". The problem here is that he wants to work in a correctional environment where most inmates speak English. He needs to understand what they are saying within a reasonable time frame.

His reading score is 79, which is in the borderline range, at a sixth grade level, and above 8% of the standardization sample. Spelling score is 87, which is low average, at a seventh grade level, and above 19% of the standardization sample.

Problems are evident when he was asked to take the Inwald Personality test. He took a long time trying to complete the test. He was not able to understand approximately 40 items on the Inwald Personality test. He asked what the meaning was of numerous words. Some of the words he could not understand were sad, discouraged, anxious, blue, reckless, irritated, brushes with the law, annoyed, evil, tingling, deliberately, restless, faults, and justified. He gave an invalid profile because he really could not answer the statements on his own as he needed assistance in defining words.

The Merit Review Board raised the issue of trying to assess if Mr. [REDACTED] has any racial bias. There is no evidence that he has racial bias. To my knowledge nobody has a test that measures racial bias because you would have to identify a number of individuals who have been identified as racist law enforcement officers and then ask their cooperation in taking a test. It is unlikely that you would be able to find a sample large enough to test.

For example, scale 8 on the MMPI which was originally labeled the schizophrenia scale was developed empirically by contrasting the item endorsements of the original normative group with responses of two partly overlapping groups of 50 patients who had been diagnosed as schizophrenic. This is a common method for constructing a scale for a personality test. You would have to find a known group of racist law enforcement officers and compare them to a normative group of law enforcement officers who are not deemed to be racist.

It is quite probable that Mr. [REDACTED] misunderstood numerous items on the Institute of Forensic Psychology's COPS test. He is not capable of giving a valid personality test because of his difficulty understanding the meaning of numerous words. His responses to the Inwald Personality test are invalid.

Mr. [REDACTED] reports that he wants to enforce the law, correct people, and help people. He reports that some people can be helped and some can't. He wants to achieve something in his life and he wants his wife to be proud of him.

He was very anxious to get some feedback from me regarding his evaluation. I told him that my main concern was his ability to understand inmates. He reacted to this comment in a very authoritarian and argumentative way. He angrily stated, "I don't think they will use those words you have in the book". He went on to report he has friends who are Hispanic and African American. He became very defensive and too argumentative when I told him that one of my main concerns was his ability to understand English. Many of the words he did not understand on the Inwald Personality test have to do with emotions. For example, he didn't understand the meaning of sad, discouraged, anxious, blue, irritated, and annoyed. Inmates express feelings all the time. They communicate with Correction's Officers every day. It requires a Correction's Officer who can process what they're saying and react appropriately. Inmates in distress will be difficult for Mr. [REDACTED] to understand. Given a stressful situation in a correctional environment, Mr. [REDACTED]' understanding of English is likely to be even more deficient. This leaves room for entirely too many misunderstandings and miscommunications between Mr. [REDACTED] and inmates.

Summary and Recommendations:

[REDACTED] shows no evidence of mental illness, personality disorder, substance abuse problems, or antisocial tendencies. He is basically stable and responsible. He has almost a burning desire to become a Correction's Officer. His cognitive functioning over all is in the low average range. He has deficits in verbal areas such as vocabulary which was in the 9th percentile and similarities which measures abstract reasoning and was in the 2nd percentile. Attention, concentration spans, and short-term working memory as measured by the digit span had a scaled score of six which is also in the 9th percentile. Reading score is 79, in the borderline range, at the 6th percentile and above 8% of the standardization sample. His spelling score is in the low average range.

Mr. [REDACTED] is not able to give a valid personality test if required to read the items on his own. He asked for clarification and definitions of words on 40 Inwald Personality test items. He did not know the meanings of words such sad, discouraged, anxious, blue, reckless, irritated, brushes with the law, annoyed, evil, tingling, deliberately, restless, faults, and justified. Many of these words have to do with feeling states. My opinion is that he processes the English language too slowly. He will have difficulty understanding inmates. This leaves room for serious misunderstanding and miscommunication. He is not able to process the English language quickly enough to understand, adjust, react, and cope with a stressful situation in a correctional environment. Inmates in distress and/or mentally ill would have difficulty communicating with Mr. [REDACTED]. Their needs could go unmet with potentially disastrous consequences. Should an inmate use words such as sad, distressed, discouraged, irritated etc. in a sentence he is not likely to understand what the inmate is saying. Should an inmate use the word evil maybe in a sentence saying evil voices are telling him to do something, Mr. [REDACTED] is not likely to understand. Mr. [REDACTED]'s response is that inmates do not use words like "you have in that book".

It is my opinion that [REDACTED] needs to continue to improve his English comprehension. At the present time I consider him psychologically unsuitable for employment as a Correction's Officer.

Robert Kanen, Psy.D.
Robert Kanen, Psy.D.
Licensed Psychologist
NJ License No. 2175

RK/words-dt
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April 15, 2014

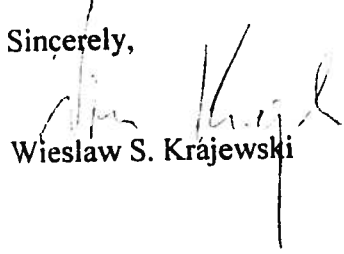
State of NJ
Civil Commission
Division of Appeal And Regulation Affairs
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Trenton, NJ. 08625-0312

Re.: [REDACTED]
CSC Docket No.: 2013-2628

Dear Sir/Madam:

Attached please find copy of an appeal submitted on behalf of Mr. [REDACTED]. Please reply to my office regarding your final decision.

Sincerely,


Wieslaw S. Krajewski

WSK/kmm
Cc; Jennifer Rodriguez
Department of Corrections
P.O. BOX 863
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April 18, 2014

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Re: [REDACTED] Department of Corrections, Correction Officer Recruit, CSC
Docket # 2013-2628

The following are the exceptions regarding the above matter. Mr. [REDACTED] was evaluated on two different occasions by two independent doctors and both determined that he was psychologically fit to perform the duties of a Correction Officer. Dr. Richard M. Sostowski writes, "It is my opinion with reasonable medical certainty that [REDACTED] does not show any evidence of a psychiatric disorder that would preclude his working as a corrections officer in New Jersey." Dr. Robert T. Latimer specifically wrote in his opinion that "this patient does not have antisocial traits and has to be considered employable and competent to discharge the duties of a Correction Officer. He is very motivated to do so, and the prognosis for his success on that job is excellent." On a letter that he wrote on April 17 regarding Dr. Kanen's report he writes, "the evaluation by Dr. Kanen is negative only due to language issues. Dr. Kanen comments are exaggerated and dramatic, because he shows no historical evidence of such experiences. The issue is highly subjective." See attached by Dr. Robert T. Latimer.

This fourth doctor that Mr. [REDACTED] was sent to for an independent evaluation, a Dr. Robert Kanen, indicates that Mr. [REDACTED] passed and met the required scores by various tests that were administered by him however he rendered an opinion, "That [REDACTED] needs to continue to improve his English comprehension," and bases his unsuitability on that issue. There does not appear to be a nexus between the various psychological test results and Dr. Kanen's opinion regarding Mr. [REDACTED] English skills, therefore I am recommending that [REDACTED] name be placed back on the Civil Service list so that the NJ Department of Corrections can continue to process him.

Summary of Dr. Kanen's findings:

- 1) Dr. Kanen was asked to give an independent psychological evaluation only not an opinion as to whether he felt Mr. [REDACTED] could perform the duties of a correction officer. That evaluation should be left to those who test him for that position. In that regard, Mr. [REDACTED] has already passed the entrance level exam administered by the NJ Civil Service Commission high enough to be considered. Performance evaluation regarding

his abilities as a Correction Officer would be evaluated once hired and sent to the Corrections Academy where he would be trained and tested for that position.

- 2) Dr. Kanen states the following in his report under Mental Status and Psychiatric History:

Mr. [REDACTED] was oriented to time, place and person.
He was cooperative and behaviorally controlled.
He was alert and responsive.
He was not in distress.
His speech was sometime difficult to understand.
He sometimes had difficulty understanding me.
His mood was calm for most of the evaluation.
Affect was appropriate.
Thought processes were logical and coherent.
He reports no history of hallucinations or delusions.
He reports no problems with sleep or appetite.
He reports no symptoms of depression.
He has never taken medication for mental health problems.
There is no history of psychiatric hospitalizations or mental illness.
He has never been in counseling.
There is no history of suicide attempts.

Summary/interpretation: Nothing which indicates and metal or psychiatric problem.

- 3) In Dr. Kanen's report of Test Administered he states he administered several tests and reviewed other reports submitted.
- 4) Under his report of Interview Findings and Background Information he simply describes Mr. [REDACTED]
- 5) Under Metal Status Examination and Psychiatric History he repeats what was said in item number 2.
- 6) Under History of Substance Abuse and Antisocial Behavior he reports no illegal drug use.
- 7) Under Results of Psychological Evaluation he reports the following:

Mr. [REDACTED] has an estimated verbal IQ of 78
Performance IQ of 99
An estimated full-scale IQ of 87 placing him in the low average range of intelligence.
He is functioning above 19% of the population and below 81%
Of significant concerns are his verbal skills.
He is able to recall factual information about the world around him.
He had a scaled score of 9 on information subtest which is in the average range.
He is able to recall factual information about the world around him.

His vocabulary scaled score is 6 and is above 9% and below 91% of the population.

Understand the meanings of words is difficult.

The Similarities scaled score is in the 2nd percentile and below 98% of the general population.

This thinking is on a very concrete level.

On a vocabulary subtest he asked if he could use a dictionary.

Dr. Kanen renders an opinion in which he states that Mr. [REDACTED] needs to understand what inmates are saying within a reasonable time frame but offers no proof that Mr. [REDACTED] would not be able to understand or interpret what an inmate is saying. Such as: I need to use the restroom; I am sick and need to visit a doctor; I feel like I want to commit suicide; I am hungry; I want to call my attorney; I am upset; I want to go to the library; I want to rest; I am tired; I want to shower; I want to speak to your supervisor; etc....

He continues with the following:

His reading score is 79 which is in the borderline range, at sixth grade level, and above 8% of the standardization sample.

Problems are evident when he was asked to take the Inwald Personality test.

He took a long time to complete the test.

He was not able to understand approximately 40 items on the Inwald Personality test.

He asked what the meaning was of numerous words.

He gave an invalid profile because he really could not answer the statements on his own and he needed assistance in defining words.

Mr. [REDACTED] was not given a specific time frame to complete the Inwald Personality test and realizing that this was extremely important, he did not want to answer any questions which he was not 100 percent certain of the meanings. He therefore took his time to be accurate and asked appropriate questions in order to ensure that he understood the meanings of some words. Dr. Kanen interpreted this as an inability to understand statements on his own. Mr. [REDACTED] was advised to ask questions if he was not 100 percent sure of what something meant and he took this advice and the opportunity to question words when he felt it was needed. He was simply doing what he was instructed by others regarding how to properly take this type of exam.

Dr. Kanen states that it was quite probable that Mr. [REDACTED] misunderstood numerous items on the Institute of Forensic Psychology's COPS test. He is not capable of giving a valid personality test because of his difficulty understanding the meaning of numerous words. His responses to the Inwald Personality test are invalid.

Dr. Kanen appears to be concerned that Mr. [REDACTED] would not understand the feelings of inmates all of the time. He states that being a Correction Officer requires an individual to process what they are saying and react appropriately, but offers no evidence that Mr. [REDACTED] would not know how to react. Neither Dr. Kanen nor Mr. [REDACTED] have been trained as Corrections

Officers so it could not be expected that without proper training, neither would really know what a Correction Officer would be required to do. Therefore his argument is moot.

8) Under Summary and Recommendations, Dr. Kanen states the following:

Mr. [REDACTED] shows no evidence of mental illness, personality disorder, substance abuse problems, or antisocial tendencies.
He is basically stable and responsible.
He has almost a burning desire to become a Correction's Officer.
His cognitive functioning overall is in the low average range.
He has deficits in verbal areas such as vocabulary which was in the 9th percentile and similarities which measures abstract reasoning and was in the 2nd percentile.
Attention, concentration spans, and short-term working memory as measured by the digit span had a scaled score of six which is also in the 9th percentile.
Reading score is 79, in the borderline range, at the 6th percentile and above 8% of the standardization sample.
His spelling score is in the low average range.
He states that Mr. [REDACTED] is not able to give a valid personality test if required to read the items on his own.
He asked for clarification and definitions of words on 40 Inwald Personality test items.
He did not know the meaning of certain words.
Dr. Kanen's opinion is that he processes the English language too slowly.
He also states that he will have difficulty understanding inmates.
He is not able to process the English language quickly enough to understand, adjust, react, and cope with a stressful situation in a correction environment.
Inmates in distress and/or mentally ill would have difficulty communicating with Mr. [REDACTED]. Their needs could go unmet with potentially disastrous consequences.

It was his opinion that he needs to continue to improve his English comprehension. At the present time, Dr. Kanen considers Mr. [REDACTED] as psychologically unsuitable for employment as a Correction's Officer.

Exceptions:

Dr. Kanen provides no psychological basis for considering Mr. [REDACTED] as psychologically unsuitable, in fact he does just the opposite. He list every psychological exam that Mr. [REDACTED] took, and although he scored below average, it does not seem that his scores were not acceptable.

The main theory or concept that Dr. Kanen appears concerned with is Mr. [REDACTED]' current level of understanding the English language. In fact this was his recommendation, "he needs to improve his English comprehension."

Dr. Latimer wrote in his opinion, "It is noted that this patient has made excellent progress in the development of his vocabulary in English." How is it that two "experts" render completely

different opinions regarding Mr. [REDACTED] ability regarding his understanding of the English language, a factor that should only be evaluated by the NJ Department of Corrections in both the academy and on the job?

The facts of this case are as follows:

- 1) Mr. [REDACTED] graduated from High School and met the requirements to take the Civil Service exam for the Correction Officer title.
- 2) Mr. [REDACTED] has successfully taken and passed a NJ Motor Vehicle examination in English since he possesses a valid NJ Driver's License.
- 3) Mr. [REDACTED] became a US Citizen and in doing so was required to successfully pass an English test which he did in 2010.
- 4) Mr. [REDACTED] took the Civil Service Exam and was able to read and comprehend the questions on the exam in English, without any assistance and within the required time limit given.
- 5) Mr. [REDACTED] successfully passed various phases of the background investigation in which the NJ Department of Corrections found no reason not to allow him to continue forward in his career goal.
- 6) Mr. [REDACTED] speaks the Polish language fluently which could be an asset to an agency which has Polish speaking inmates. Many of these inmates could communicate better with someone that speaks the same language.
- 7) Mr. [REDACTED] runs a successful business on his own in which the majority of his customers are English speaking individuals. He has had hundreds of individuals hire him for various types of work and he was able to communicate successfully in English with these customers. He also was able to submit written estimates and contracts which were prepared by Mr. [REDACTED] and accepted by these individuals. This should provide sufficient proof that he routinely communicates at a level which individuals can understand or he would not have such a successful business. Mr. [REDACTED] wants to continue to have the "American Dream" and become a law enforcement officer where he truly can help individuals to lead a more productive life. The NJ Department of Corrections will place him in an academy in which he will be required to read and comprehend various items in English. It will be during that period where he will be able to prove that he can successfully perform as a Corrections Officer. If not they will remove him for unsatisfactory performance. Once he graduates, he will be on a one year probation which again will allow him the opportunity to prove himself capable of performing as a Correction Officer. If during either of these two periods, the academy or probationary period, he fails to perform satisfactorily, he can be removed for just cause.

- 8) Dr. Kanen was asked to psychologically evaluate Mr. [REDACTED]. He provided no evidence that he is not psychologically qualified to at least enter the Corrections Academy where he can prove his ability to function well.
- 9) Dr. Karen's contention is that Mr. [REDACTED] might not be able to understand what an inmate is saying. In Corrections, inmates are from various backgrounds including Hispanic who may only speak Spanish. There are many other nationalities in which inmates may not be able to communicate in English. Officers are trained to handle these situations. Officers are not required to understand every request that an inmate states to that officer, but rather officers who are not sure what an inmate says or wants knows how to handle the situation. It would be proper for an officer to notify his/her immediate supervisor, call for medical, or other individuals which might be required to assist. Dr. Karen provides no evidence that Mr. [REDACTED] would not be able to do the same. There was no evidence to suggest that Mr. [REDACTED] cannot read human emotions and act appropriately in any given situation.
- 10) Denying Mr. [REDACTED] the opportunity to become a Correction Officer based solely on his present level and knowledge of the English language could be considered discriminatory based upon prior case law if it cannot be proven that it seriously impacts his ability to perform the job of Correction Officer in a satisfactory manner, something that he has not been given the opportunity to prove.
- 11) Approximately 50 correctional officers were contacted and asked to provide a list of questions commonly used by inmates which are listed below:

What is my release date?
What is my court date?
What detainers do I have or do I have any detainers?
I need toilet paper, can you provide me with some?
What is or how much is my bail?
Can you let me see the Sergeant?
I need pads, can you get them for me?
What is my release date?
Can I change my cell?
Do you have any injuries?
Have you ever attempted suicide?
Are you thinking about suicide now?
How do I get on the social worker list?
Did I get any mail?
How do I get my property?
What time is it?
Why are we being locked down?
Can you put my name on the Church services list?
Can you put my name on the Muslim services list?
Can I have inside or outside rec?

Why am I going to lock up?
 Can I get a job with a drug record here?
 I need my phone numbers that are in my phone in booking, can you get them or can
 someone else get them?
 What day is commissary and how do I order?
 My pin doesn't work, how am I supposed to make a call?
 What day do we go to the library?
 Can I see the doctor?
 Can you find out my court date?
 What is my release date?
 When are the trays coming?
 What's my bail?
 Why am I here?
 When will I see the judge?
 How can I make a direct phone call?
 What is my max date?
 What's for dinner?
 Can you call medical for me?
 Hey, CO, when's my court date?
 How do I sign up for a job?
 I need new boots, how do I get some?
 Can I get another tray?
 CO, I missed my meds, can you call medical?
 CO, what are my charges?
 I need my green sheets.
 CO, I got a beef with my Bunkie. If you don't move this guy, I'm gonna make him tap
 out.
 I know where there is a shank in the dorm. Can I get an extra tray if I tell you where it's
 at?
 They're making hooch in cell 12 and they ain't sharin. What you gonna do about it?
 CO, when am I getting out of the hole?
 CO, my Bunkie is threatening to hang up!
 CO, will you pop my gate and kill my light?

Mr. [REDACTED] was given this list and with the exception of slang words used in the
 correctional environment, he was able to answer and understand the meanings of these questions.
 He also stated that if he did not understand what an inmate was saying, he would ask the inmate
 to repeat it again and if unsuccessful, he would ask his supervisor. This would be the proper
 action to take under these circumstances according to the correction officers who provided these
 questions.

Recommendation:

Since the only continued issue is that Mr. [REDACTED] has some difficulty in understanding each
 and every word in the English language, something that most of us all experience, I would

recommend that he be given the opportunity to enter the academy and prove that he has the ability to handle the duties and responsibilities of a Correction Officer once and for all. This is his passion and he truly wants the opportunity to prove himself. Denying him this opportunity would be a severe injustice to an immigrant who continues to learn every day the ways of American life. Please give him this opportunity by reinstating his name back on the NJ Department of Corrections Officer Recruit Civil Service list so that he can continue in the process.

Thank you for your time.

Enc: Dr. Latimer's letter

cc: Jennifer Rodriguez
Department of Corrections
P.O. Box 863
Trenton, New Jersey 08625-0860

Bob Schremser
Civil Service Commission
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
P.O. Box 312
Trenton, NJ 08625-0312

Robert T. Latimer, M.D., P.A.

April 17, 2014

Mr. [REDACTED]

702 Plum Street

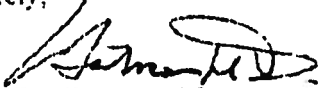
Trenton, NJ 08638

Re: Report of Dr. Robert Kanen

Dear Mr. [REDACTED]:

In my opinion, the report of Dr. Robert Kanen is fair rather than biased, with the exception noted below. The issues that Dr. Kanen raises are mostly related to your deficiency in the English language. That is not a psychiatric issue per se, as I understand it. Linguistics is not in my sphere of expertise. It is clear that the mental status described by Dr. Kanen is free of overt clinical psychiatric issues. (Kanen report, page 2, paragraph 4). Therefore, the evaluation by Dr. Kanen is negative only due to language issues. Dr. Kanen comments that this could have "disastrous consequences", which I think is somewhat exaggerated and dramatic, because you show no historical evidence of such experiences. The issue is highly subjective: possible rather than probable.

Sincerely,


Robert T. Latimer, M.D.

RTL/sc



In the Matter of [REDACTED]
Correction Officer Recruit (S9999K),
Department of Corrections

CSC Docket No. 2013-2628

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

Medical Review Panel Appeal

ISSUED: ~~2013~~ 14 2014

(BS)

[REDACTED], represented by Wieslaw S. Krajewski, Esq., appeals his rejection as a Correction Officer Recruit candidate by the Department of Corrections and its request to remove his name from the eligible list for Correction Officer Recruit (S9999K) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on November 21, 2013 which rendered the attached report and recommendation on November 21, 2013. Exceptions were filed on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. The Panel noted the negative recommendations that were indicated by Dr. Guillermo Gallegos, evaluator on behalf of the appointing authority, who cited that the appellant was defensive during the interview and had been arrested for shoplifting in 2009, which the appellant failed to note on the IFP biographical summary form. Dr. Gallegos noted that the appellant told him the charge was dismissed outright, which was not the case. Dr. Gallegos cited a "very low score" on the intelligence test (presumably the Shipley) and scoring "poor to low average" on the COPS test which is used to predict success in public safety employment as reasons for recommending the appellant's removal from the subject eligible list. Dr. Richard Sostowski, evaluator on behalf of the appellant, conducted a psychiatric evaluation of the appellant, and opined that there was no psychiatric diagnosis precluding the appellant from serving as a Correction Officer Recruit. Dr. Sostowski also offered that he did not believe that the appellant was being evasive

in regard to his shoplifting arrest. Dr. Sostowski attributed the appellant's answers to questions indicating the possibility of gender bias to cultural differences associated with him having grown up in Poland. The Panel further noted that the appellant was also evaluated on his behalf by Dr. Robert Latimer, who reviewed all of material available to Drs. Gallegos and Sostowski, also opined that there was no psychiatric diagnosis present and that the appellant was mentally fit for the position.

The evaluators on behalf of the appellant and the appointing authority reached differing conclusions and recommendations. Dr. Gallegos cited concerns relating to the appellant's shoplifting arrest, his lack of disclosure concerning his arrest, and a low IQ score as reasons causing him to be found unfit for the position. The examiners on behalf of the appellant noted that no psychiatric diagnosis was present and that the appellant was fit. The appellant's appearance before the Medical Review Panel was unremarkable in that he did not show any signs of overt psychopathology such as psychosis or thought disorder. He answered all of questions posed by the Panel in a cooperative manner. The Panel did not view the shoplifting incident as representative of a pattern of antisocial behavior. Regarding the low IQ, the Panel discounted the testing results as due to language differences and noted that the non-verbal IQ test was consistent with having an IQ in the normal range. The Panel was more concerned with the appellant's responses to items reflecting gender and racial bias. The appellant indicated that he had changed his thinking and that he considered everyone to be equal. His attorney cited the appellant's relationship with his wife, who was college educated while he was not, earned as much money as he did, and upon whom he depended for his continued acculturation, as indicative that he did not have a true gender bias. The Panel agreed. However, the Panel remained concerned about the possibility of racial bias, particularly in an environment like the Department of Corrections, which is a racially diverse arena with a potential for problems in this area. Accordingly, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for County Correction Officer, justified sending the appellant for an independent psychological evaluation which should focus on the issue of racial bias. The Panel recommended that such an evaluation use an objective instrument, such as the Inwald Personality Inventory for example, that could provide a window into the appellant's thoughts about race. Other instruments that the independent evaluator might have access to that could get data on this issue could be used as well.

In his exceptions, the appellant asserts that he does not exhibit any bias toward minorities, women, or persons with other religious or political beliefs. While he supports the recommendation for an independent evaluation, the appellant "proposes" that this evaluation be performed while he is attending the academy and that someone be present during that interview who "could explain...the meaning of certain legal or professional terms that he does not understand." The appellant

included a number of letters of recommendation from his Pastor and members of the minority community.

CONCLUSION

The Civil Service Commission has reviewed the report and recommendation of the Medical Review Panel. The Commission notes that the Panel conducts an independent review of the raw data presented by the parties as well as the recommendations and conclusions drawn by the various evaluators and that, in addition to the Panel's own review of the results of the tests administered to the appellant, it also assesses the appellant's presentation before it prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented. The Commission finds that the appellant's exceptions do not persuasively dispute the findings and recommendations of the Panel. The Commission agrees with the Panel's recommendation that greater clarification is needed regarding the possibility of issues with racial bias. The Commission notes that the appellant has to pass this independent psychological evaluation before being admitted to the academy so it is not possible to grant the appellant's request that the evaluation take place while he is attending the academy. The Commission further notes that it is incumbent upon the appellant to ask questions regarding concepts or terms which he may not understand during the evaluation process. Therefore, the Commission accepts and adopts the recommendation of the Panel and finds it necessary to refer this matter for independent evaluation by a New Jersey licensed psychologist.

ORDER

The Civil Service Commission therefore orders that [REDACTED] be administered an independent psychological evaluation. The Commission further orders that it is appropriate in this matter to assess the cost incurred for this evaluation to the appointing authority in the amount of \$530. Prior to the Civil Service Commission's reconsideration of this matter, copies of the independent evaluator's report and recommendation will be sent to all parties with the opportunity to file exceptions and cross exceptions.

[REDACTED] is to contact Dr. Robert Kanen, the Civil Service Commission's independent evaluator, in order to arrange for an appointment within 15 days of receipt of this order. Dr. Kanen's address is as follows:

Dr. Robert Kanen
Kanen Psychological Services
76 West Ridgewood Avenue
Ridgewood, New Jersey 07450
201-670-8072

If Mr. [REDACTED] does not contact Dr. Kanen within the time period noted above, the entire matter will be referred to the Civil Service Commission for final administrative determination and the appellant's lack of pursuit will be noted.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 13TH DAY OF MARCH, 2014

Robert M. Czech

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence:

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c:

[REDACTED]
Wieslaw S. Krajewski, Esq.
Jennifer Rodriguez
Kenneth Connolly
Dr. Robert Kanen

TO: State of New Jersey, Department of Personnel
Merit System Practices & Labor Relations

FROM: Medical Review Panel
(Angelica Diaz-Martinez, Psy.D., Evan Feibusch, M.D., Joel Friedman, Ph.D.)

RE: [REDACTED]

DATE: 11/21/2013

Identifying Information:

Mr. [REDACTED] is a 26-year-old applicant to the New Jersey Department of Corrections for the position of Corrections Officer Recruit. His name was removed from the eligibility list of the hiring authority for the reason of being psychologically unfit for the position. The applicant was interviewed by Guillermo Gallegos, Ph.D. on behalf of the hiring authority, and by Richard Sostowski, M.D. and Robert Latimer, M.D. on behalf of the applicant. Mr. [REDACTED] was present at the meeting, along with his attorney, Wieslaw Krasewski. Dr. Gallegos was present on behalf of the hiring authority.

Documents Reviewed:

- Psychological Report, Guillermo Gallegos, Ph.D., 2/19/2013
- Results of the "COPS" test (IFP), undated
- State of New Jersey Department of Corrections Law Enforcement Applicant Investigation Report, SCO Marth Hicks and SCO Brian Patoe, 1/9/2013
- Law Enforcement Pre-Employment Psychological Evaluation, David Gomberg, Ph.D., 1/7/2013
- Biographical Summary Form, Part #1, undated
- Psychiatric Report, Richard Sostowski, MD., 6/7/2013
- Report, Robert Latimer, M.D., 11/11/2013

Findings of Previous Examiners:

Dr. Gallegos conducted a psychological evaluation that included a clinical interview and the tests and questionnaires noted above, as well as the Shipley Institute of Living Scale and Revised Beta - Examination III (a non-verbal test of intelligence). On the Shipley Institute of Living Scale, Mr. [REDACTED]'s IQ was estimated at 77, indicating borderline intellectual functioning. The follow up Beta - III, presumably done due to concerns about the validity of the Shipley in the context of English not being Mr. [REDACTED]'s native language, was consistent with an IQ of 91, indicative of average intellectual functioning. Dr. Gallegos' report references other psychological testing that was done, however, the data from those tests were not included in the materials available for review, nor were they commented on in Dr. Gallegos' report.

Dr. Gallegos opined that Mr. [REDACTED] was defensive during the interview and specifically noted Mr. [REDACTED]'s 2009 arrest for shoplifting. Dr. Gallegos noted that Mr. [REDACTED] had not acknowledged the arrest on the IFP Biographical Summary form and that the candidate had told him that the charge was dismissed outright, which Dr. Gallegos said was not the case. He also noted the "very low" score on the intelligence test, presumably the Shipley. Although Dr. Gallegos did not mention it in his report, the "COPS" test was scored as "poor to low average" for predicting success in public safety.

Dr. Sostowski interviewed Mr. [REDACTED] and reviewed the material he had available from the IFP. He opined that no psychiatric diagnosis could be made on Mr. [REDACTED] and that the candidate was not being evasive regarding his discussion of the shoplifting arrest. He attributed answers to questions indicating the possibility of gender bias to cultural differences associated with Mr. [REDACTED] having lived in Poland until age 15.

Dr. Latimer interviewed Mr. [REDACTED] and reviewed the available material that had been produced by Drs. Gallegos and Sostowski. Dr. Latimer also opined that no psychiatric diagnosis was present and that Mr. [REDACTED] was mentally fit for the position.

Mr. [REDACTED]' Appearance Before the Panel:

Mr. [REDACTED] presented as a neatly dressed man who appeared to be about his stated age. His behavior during the MRP was unremarkable and he did not show signs of overt psychopathology such as psychosis or thought disorder. He answered the questions of the MRP in a cooperative manner. His speech was notable for the presence of an accent.

The applicant explained to the MRP that he had been suspended in school as a result of his being unable to understand the interactions with his peers, due to not being able to understand English. This resulted in him talking and "cutting" class. He had not been suspended for fighting. By the time of high school graduation, Mr. [REDACTED]' language skills had improved, along with his school performance.

Mr. [REDACTED] gave an account of the shoplifting arrest, and through his attorney was able to clarify that he had been arrested and charged, but never convicted. The charges were dismissed after demonstrating six months of appropriate behavior. The arrest was subsequently expunged from his record. Regarding his lack of reporting this on the Biographical Summary, Mr. [REDACTED] said that he had filled out the form at the IFP facilities and asked a proctor how he should indicate the situation on the paperwork. He was told to mark it as "0," indicating that he had not been convicted, but to initial it. The copy of the paperwork reflects this. The investigation report from the Department of Corrections indicates that Mr. [REDACTED] had disclosed the arrest and in the MRP he stated that he freely discussed the incident with Dr. Gallegos.

The MRP went over the gender/ race bias questions that were flagged on the COPS test. Mr. [REDACTED] stated that he had changed his thinking on some of these items and that he did not have a gender/ racial bias.

Conclusion:

In Mr. [REDACTED]' case, the evaluators on behalf of the applicant and the hiring authority reached differing conclusions and recommendations. Dr. Gallegos cited concerns about Mr. [REDACTED]' shoplifting arrest, lack of disclosure of the arrest, and a low IQ score as reasons causing him to be unfit for the position. The examiners on behalf of the candidate noted that no psychiatric diagnosis was present and that the candidate was fit.

The MRP did not see the shoplifting incident as representative of a pattern of antisocial behavior. We also did not see him as failing to have disclosed the incident. The records that we had available clearly indicate that he disclosed the incident to the Department of Corrections, spoke about it with Dr. Gallegos, and he offered an excuse for marking a "0" on the Biographical Summary that made sense. Regarding the low IQ, we discount the results of the Shipley as being due to language differences. The non-verbal test of IQ was consistent with having an IQ in the average range. This was seen as a more accurate reflection of his IQ than the Shipley, as the very

nature of what is being tested makes a successful attempt to "fake" a higher IQ score highly unlikely. The responding on the test would have to be by chance, and lucky enough to be correct.

We were more concerned about the candidate's responses to items reflecting gender and racial bias. The applicant indicated that he had changed his thinking related to these items and that he considered everyone to be equal. His attorney made a cogent argument that if Mr. [REDACTED] had a true gender bias, he would have more difficulties in the relationship with his wife, who is a college graduate (he is not), earns as much money as he does, and whom he depends greatly on while he continues to become acculturated. We also saw this as a viable argument against the presence of significant gender bias.

This, however, did not address our concerns over the way he had answered questions related to racial bias. Although we did not find evidence of racial bias in the applicant's behavioral history, the environment in the Department of Corrections is a racially diverse one with potential for problems in this area.

Taking into consideration the evaluations of Drs. Gallegos, Sostowski, and Latimer, Mr. [REDACTED]'s presentation, the psychological test results, and the behavioral record when viewed in light of the job specifications for Corrections Officer Recruit, it is our opinion that the applicant be sent for an independent evaluation. We recommend that such an evaluation use an objective instrument, the Inwald Personality Inventory for example, that could provide another window into the applicant's thoughts about race. Other instruments that the independent evaluator might have access to that can get data on this issue could be used as well.

Recommendation:

It is the recommendation of the Panel that the candidate, [REDACTED], be evaluated by an independent evaluator.



Evan L. Feibusch, M.D.
Diplomate of the American Board of
Psychiatry with Certification in the
Subspecialty of Forensic Psychiatry

11/21/2013

Date